IN THE HIGH COURT OF HIMACHAL PRADESH,SHIMLA

C.W.P. No.1743 of 2002

Judgment reserved on: 4.1.2007

Date of Decision : 9.1.2007

Tek Ram and others .. Petitioners

Versus

Hon'ble High Court of H.P. and ors Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta,Judge

Whether approved for reporting ? No

For the Petitioners: Mr.Rajeev Sharma, Senior Advocate, with Mr.Surinder Sharma, Advocate

For respondent No.1: Ms.Ranjana Parmar, Advocate

For respondents No. 1 to 13/Intervenors: Mr.M.L.Sharma, Advocate

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Deepak Gupta, Judge

The petitioners in this case are working as Private Secretaries in this court. The private respondents are working as Superintendents in this court. Their conflict of interest is mainly in relation to the post of Court Secretary. By means of this writ petition, the petitioners have claimed the following reliefs:-

1. That items No. 8 and 10 of Schedule-III of the High Court of Himachal Pradesh (Recruitment, Conditions of Service and Conduct (Eighth Amendment) Rules, 2000 i.e. Annexure-PC dated 22nd July, 2000, and items No. 4 & 5 of Schedule-B of Annexure-PF, dated 25th/26th

November, 2003 and items No. 4 & 5 OF Schedule-B of Annexure PG, dated 9th September, 2004 respectively may be struck down being ultra vires Articles 14 & 16 of the Constitution of India or alternatively items No. 8 & 10 of Schedule-III of Annexure-PC, dated 22nd July, 2000 and items No. 4 & 5 of Schedule-B of Annexure-PF & PG, dated 25th/26th November, 2003 & 9th September, 2004 respectively may be read down to include the category of petitioners i.e. Private Secretaries as feeder category for promotion to the posts of Assistant Registrars and Court Secretaries to bring them at par with other feeder categories.

2. That the impugned Annexures PB & PE, dated March 10th, 2002, 22nd November, 2002 respectively may be quashed and set aside.

The genesis of the dispute lies in the fact that as per the High Court of Himachal Pradesh (Recruitment, Conditions of service and Conduct) Rules, 1977, (hereinafter referred to as the Rules of 1997), the post of Assistant Registrar was to be filled up by way of selection from amongst Superintendents with minimum 5 years service as such. The post of Court Secretary was required to be filled up by selection from amongst graduate Readers with a minimum 3 years service, as such. Private Secretaries were not in the feeder category of Court Secretaries. Private Secretaries who were graduates and had three years service as Private Secretary, were eligible to be promoted as Secretaries.

In 1999 a decision was taken by the government in consultation with the High Court to upgrade the six posts of Reader to that of Court Secretaries. There were already 2 posts of Court Secretaries in existence. These six posts of Court Secretaries were upgraded w.e.f. 7.12.1998. The category of Private Secretaries, who were in the same scale of pay as Readers, made a representation to the Chief Justice of High Court that their category of Private Secretary should also be considered for promotion to the post of Court Secretaries and Assistant Registrars.

In the present case it is important to note that after the upgradation of the six posts of Readers the said posts of Reader ceased to exist. According to the Private Secretaries since they were knowing short-hand and were also well versed with the court procedure, they should also be put in the feeder category for Court Secretary. The representation of the petitioners is attached as Anneure PA with the petition which is dated 28.5.1999.

The matter regarding upgradation of six posts of Readers and how the upgraded posts of Court Secretaries should be filled up was under the consideration of this court on the administrative side. The Registrar General of the court put up a note to the then Chief Justice on 17.3.1999 and the Chief Justice ordered that Justice Kamlesh Sharma and Justice R.L.Khurana,

shall constitute a committee for making recommendations in this behalf. In the meantime, the aforesaid representation by the Private Secretaries was also received.

The gist of the case of the petitioners is that there are only 12 posts of Private Secretaries, out of which two were kept in abeyance and these Private Secretaries can only be promoted against eight posts of Secretaries. On the other hand, there are only 13 posts of Superintendents and one Chief Librarian and one Marriage Councilor and these 15 people are eligible to be promoted in two different categories. There are 7 posts of Assistant Registrars and 8 posts of Court Secretaries, i.e. 15 posts in all. Therefore, according to the petitioners, the avenues of promotion for the Private Secretaries are on the lower side and the avenues of promotion for the persons working as Superintendents are much more leading to discrimination against them. In the petition they have tried to point out that various persons who were appointed as Private Secretaries many years back still continue to be Private Secretaries, whereas their compatriots who were appointed as Superintendents even after them have been promoted to higher post(s). The challenge in the petition was laid to the High Court (Recruitment, Conditions of Service and Conduct) (Eighth Amendment) Rules, 2000 (Annexures A to C) wherein for

the post of Court Secretary, it was provided that they would be appointed by selection from amongst graduate Superintendents, Marriage Councilor and Chief Librarian having minimum 5 years of service. During the pendency of the writ petition, fresh rules were promulgated which are known as the Himachal Pradesh High Court Officers and Members of the Staff (Recruitment, Conditions of Service, Conduct and Appeal), Rules 2003. The eligibility criteria and feeder categories for the post of Court Secretary remain the same under the 2003 rules. The petitioners vide order dated 27.3.2006 were permitted to amend the petition and challenge the Rules of 2003. On the same date the application of the private respondents for being impleaded as respondents was partly allowed and they were permitted to intervene in the matter.

I have heard Mr.Rajeev Sharma, learned Senior Advocate, appearing on behalf of the petitioners, Ms.Ranajana Parmar, learned counsel for the High Court and Mr.M.L.Sharma, learned counsel appearing for the interveners.

Mr.Rajeev Sharma, learned Senior Advocate, has urged that whereas the Private Secretaries are only eligible to be promoted as Secretaries and there are less posts available for them, the Superintendents, Marriage Councilor and Chief Librarian are entitled to be promoted both as Assistant Registrar as well as Court Secretary.

The pay scale of Secretary, Assistant Registrar and Court Secretary is the same. His submissions are as follows:

i) That since the petitioners (Private Secretaries), Superintendents, Chief Librarian and Marriage Councilor are placed in the same scale of pay, they should have the same proportionate claims in higher promotion;

ii) He further submits that the persons equally situated cannot be treated unequally and this is violative of Article 14 of the Constitution of India;

iii) His last submission is that the Private Secretaries, Superintendents, Chief Librarian and Marriage Councilor being in the same scale of pay giving accelerated chance of promotion to some of the categories and excluding the others amounts to invidious discrimination.

Mr.Sharma has also submitted that the Private Secretaries being well conversant with the court procedure and also being trained in Stenography were well suited to be considered for promotion as Court Secretary and there is no rationale for not including them in the feeder category for Court Secretary.

On the other hand, Ms.Ranjana Parmar, learned counsel appearing for the High Court submitted

that the employees of the High Court can roughly be divided in two categories. The first category is the ministerial staff in which the Marriage Councilor and the Chief Librarian have been included and second is category of Stenographers, Private Secretaries etc. It is submitted by her that mere diminution in the chances of promotion does not give right to any particular employee or category of employees to challenge the rules. She also submits that there is nothing to show that the rules have been arbitrarily framed.

Mr.M.L.Sharma, learned counsel for the interveners submitted that the chances of promotion cannot be mathematically fixed and these have to be fixed keeping in view the exigencies in service. He also submits that if the entire strength of the ministerial category is taken into consideration, it will be clear that there is no discrimination. The strength of Private Secretaries and Stenographers is much lower than the total strength of the ministerial staff.

The contentions of various parties have been noted. There is no manner of doubt that with the change in rules, the Superintendents and other ministerial staff is placed on a better footing than the Private Secretaries and the staff on the Stenography side. However, in view of the order which I finally propose to pass, I have not gone into the merits of the case and have purposely and

consciously not expressed any opinion on the merits of the contention that the rules are discriminatory and arbitrary.

Article 229 of the Constitution of India reads as follows:-

> "229. **Officers and servants and the expenses of High Courts.-** (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:
>
> Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.
>
> (2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorized by the Chief Justice to make rules for the purpose:
>
> Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.
>
> (3) The administrative expenses of a High Court, including all salaries, allowances and pensions

> payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund."

A perusal of the aforesaid article clearly shows that the Chief Justice is the master of the High Court. The servants and the officers of the High Court are appointed by the Chief Justice or his nominee Judge. The conditions of service of the officers and servants of the High Court have to be prescribed by rules made by the Chief Justice or his nominee Judge or other officer of the court authorized by the Chief Justice to make such rules. These rules can only be set aside in case they are found to be arbitrary or discriminatory.

With a view to effectively adjudicate upon the rival contentions of the parties, I had thought it necessary to send for the records relating to the framing of the rules. This was done with the purpose of ascertaining as to what had weighed with the Chief Justice while rejecting the claims of the Private Secretaries. Surprisingly, on perusal of the files, I found that the notes put up to the Chief Justice were one sided and did not give a true picture of the views given by the Committee, referred to above. Therefore, it is necessary to give some details.

On 17.3.1999, the matter with regard to the upgradation of 6 posts of Readers to the post of Court

Secretaries etc. was placed before the Chief Justice, who constituted a committee consisting of Justice Kamlesh Sharma and Justice R.L.Khurana, for making recommendations. The committee in its meeting held on 7.5.1999 had directed the Registry to place before it information relating to the Superintendents and Readers. The committee thereafter held other meetings and on 24.2.2000 Justice R.L.Khurana made certain recommendations in file No. HHC/GAZ-1-1/74-VI at Note 424 to 433. The relevant portion of the recommendations is as follows:-

> "Therefore, the present incumbents of the earlier posts of Readers are required to be formally
> A appointed as Court Secretaries (the upgraded posts) with effect from the date of upgradation.
>
> Insofar as the appointment to the vacant post of Court Secretary consequent upon the retirement of Shri P.L.Sharma is concerned, either Shri Janki
> B Ram Sharma or Shri O.P.Garg presently holding the posts of Assistant Registrar can be appointed by way of transfer, as prayed for by them.
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> <u>(B) Amendment of the R & P Rules.</u>
> Consequent upon the upgradation of the posts of Readers to that of Court Secretaries and the
> C resultant abolition of the posts of Readers, certain amendments to the R&P rules would be necessitated, which are proposed as under:-
>
> (i) Item No. 14 of Schedule III to the R&P Rules pertaining to appointment to the posts of Readers is required to be deleted.

(ii) Item No. 10 of Schedule III in respect of appointment to the posts of Court Secretaries is proposed to be amended as under:

> "By selection from amongst graduate Superintendents, Marriage Counsellor, **Private Secretaries** and Chief Librarian having minimum five years of service as such, failing which by selection from amongst the graduate Deputy Superintendents/Revisors with atleast ten years service as such."

(iii) Item No. 8 of Schedule III in respect of appointment to the posts of Assistant Registrar is proposed to be amended as under:

> "By selection from amongst graduate Superintendents, Marriage Counsellor and Chief Librarian having minimum five years of service as such, failing which selection from amongst the graduate alteast ten years service as such."

(iv) Item No. 7 of Schedule III in respect of appointment to the post of Deputy Registrars, is proposed to be amended as under:

> "By selection from amongst the Assistant Registrar, Secretaries and Court Secretaries having at least five years of service as such."

The matter was then placed by the Registrar General of the Registry before Justice Kamlesh Sharma, on 24.2.2000. It would be pertinent to mention that on the said date Justice Kamlesh

Sharma was the Acting Chief Justice of the High Court. Her note is in the following terms:-

> "(i) Proposals at A and C to E are in order and, are approved. The present incumbents working as Readers are appointed as Court Secretaries from the date of upgradation of posts.
>
> (ii) Against remaining vacant post, Shri Janki Ram Sharma is appointed as Court Secretary by transfer by accepting his representation.
>
> (iii) Proposal for amendment of Rules as suggested by Hon'ble R.L.Khurana, J. be put up by the Rules Branch.
>
> (iv) All the representations pending on this file are disposed of in view of above order."

A perusal of the aforesaid notes clearly shows that Justice R.L.Khurana, had recommended that the six incumbents holding the posts of Readers be appointed as Court Secretaries. The committee had also recommended that the Private Secretaries be included in the feeder category for the post of Court Secretary. However, the request of the Private Secretaries for being put in the feeder category for the post of Assistant Registrar was not accepted.

It would be pertinent to note that none of the six incumbents of the posts were duly qualified to be appointed as Court Secretaries either under the Rules of

1997 or under the Rules of 2000 since they did not have 5 years of service, but they were appointed in terms of the recommendations of the committee in relaxation of rules.

After the recommendations of the aforesaid committee, the Registry put up the proposed amended rules in consonance with the directions of the committee. It seems that in the meantime some representations were received from the H.P.High Court Non Gazetted Employees Association in which they had objected to the Private Secretaries being included in the feeder category for Court Secretaries. The Acting Chief Justice directed that the file be put up alongwith the said representation. Thereafter the Superintendent (Rules) himself recommended on 24.3.2000 that the Court Secretaries should be appointed by selection from amongst Marriage Counsellor and Chief Librarian and excluded the category of Private Secretaries. He could not have done so in view of the clear-cut recommendations of Justice R.L.Khurana, approved by the Acting Chief Justice. It would be pertinent to mention that if the note of the Superintendent (Rules) dated 24.3.2000 on file No. HHC/Rules/14-61/90 is seen, it is apparent that the noting is made on the basis that certain items are as suggested by Justice R.L.Khurana, and in regard to some items there is no such mention. However, no mention is made of the fact that the recommendations of Justice R.L.Khurana, were

accepted by Justice Kamlesh Sharma. This is apparent from the note (N-787) of the District & Sessions Judge (Rules), dated 30.3.2000 the opening portion of which reads as follows (File No. HHC/Rules/14-61/90:-

> "The submissions made by the office as at N/774 to 786 ante, may kindly be perused. The draft notification incorporating **the amendments as suggested by Hon'ble Mr. Justice, R.L.Khurana**, and the consequential amendments, is placed at flag A'."

The matter was then listed before the Chief Justice. It appears that in the meantime, orders had been issued for appointing the Chief Justice who had not assumed charge. The Acting Chief Justice directed that the matter be put up before the Chief Justice. The matter was thereafter put up before the Chief Justice. A perusal of the noting file clearly reflects that the notings put up to the Chief Justice did not make mention of the fact that previously the Chief Justice had constituted a committee of Justice R.L.Khurana and Justice Kamlesh Sharma, as detailed hereinabove and that the recommendations of Justice Khurana were accepted by Justice Kamlesh Sharma as a Member of the committee while holding charge of the post of Acting Chief Justice. The Chief Justice dealt with the matter on 22nd July, 2000 and the relevant portion of his note N-87 onwards on File No. HHC/Rules/14-61/90 reads as follows:-

"I have gone through and considered the recommendations made by Hon'ble Mr. Justice R.L.Khurana, dated February 24, 2000, and the office submissions thereon.

The following amendments in the "High Court of Himachal Pradesh (Recruitment, Conditions of Service and Conduct) Rules, 1997" are ordered to be carried out in the said Rules with immediate effect:

(i) x x x x x x x x x x x x x x x x x x x x

(ii) Item of Schedule-III in respect of appointment to the posts of Court Secretaries is ordered to be amended as under:-

> "By selection from amongst graduate Superintendents, Marriage Counsellor and Chief Librarian having minimum five years of service as such, failing which by selection from amongst the graduate Deputy Superintendents/Revisors with atleast then years service as such."

(iii) to (vi) x x x x x x x x x x x x x x x x x x x x

I have considered the representations of the Private Secretaries and Judgment Writers as well as personal Assistants. Private Secretaries have their own avenue for promotions as Secretaries and the Secretaries, in turn, have avenue for promotion as Deputy Registrar. Keeping in view the number of posts of Secretaries available on the establishment of the Registry, the Private Secretaries have equal chance of promotion as that of Assistant Registrars and Court Secretaries. So the representations of

> Private Secretaries, Judgment Writers and personal Assistants are rejected."

A perusal of the file clearly reflects that the Registry did not put up the correct position before the Chief Justice. It was not brought to his notice that the recommendations of Justice R.L.Khurana, had been accepted by Justice Kamlesh Sharma, in her capacity as Member of the committee while holding the charge of Acting Chief Justice. No doubt, under Article 229 of the Constitution, it is the Chief Justice who has to frame the rules. However, once a committee is constituted and makes certain recommendations, the Chief Justice should have been apprised of the same. The Registry presented a skewed view to the Chief Justice. The notes prepared at the lower level by the ministerial staff were prepared in such a manner so as to help the ministerial staff.

As I have already clearly mentioned above, I have no intention of deciding the question regarding how the rules are to be framed, but I am clearly of the view that the manner in which the file was put up before the Chief Justice, was done with a view to present the facts in a distorted manner. In case it had been brought to the notice of the Chief Justice that a committee had been appointed to consider the matter and the committee had made certain recommendations, he may or may not have

taken the same view. The Chief Justice should have also been apprised of the fact that Justice Kamlesh Sharma, who had accepted the recommendations of Justice R.L.Khurana, especially in respect to the inclusion of the Private Secretaries in the feeder category for the post of Court Secretary had done so while she was holding the charge of Acting Chief Justice. It was also not brought to the notice of the Chief Justice that the Committee had also disposed of the representations made by the Private Secretaries in terms of its decision.

Rules of 2003 were framed basing them on the rules of 2000 and there was no change qua the category of Court Secretaries. It appears that this matter was not really considered when the rules of 2003 were framed.

Since I have held that the correct facts were not placed before the Chief Justice and that in fact a distorted version was placed before him, I have no other option, but to allow this writ petition and quash the rules of 2000 and 2003 insofar as they relate to the category of Court Secretaries only.

The file shall again be put up before the Hon'ble Chief Justice on the administrative side alongwith a copy of this judgment. The Registry shall prepare a proper note depicting the entire factual position. The Chief Justice may thereafter take a fresh decision in the matter

and decide the question whether the Private Secretaries are to be included in the feeder category to the post of Court Secretary. The Hon'ble the Chief Justice is requested to take a decision in this matter by 31st March, 2007 and he may do so after considering the entire factual aspect and the representations of the Private Secretaries/Stenographers on one side and the Superintendents/ministerial staff on the other side. The rules that the Hon'ble the Chief Justice frames will be effective from the date when the posts of Court Secretaries were upgraded. However, the Readers, who were holding the posts of Court Secretaries having been appointed in terms of the recommendations of the committee will not be disturbed. Till the Hon'ble the Chief Justice takes a decision in the matter status quo as on date shall continue.

With the aforesaid observations, the writ petition is disposed of.

January 9, 2007(K) (Deepak Gupta), Judge